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No. 90-478

In the Supreme Court of the United States

OCTOBER TERM, 1990

HEBERTO LORENZO, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

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QUESTION PRESENTED

Whether the warrantless search of the car that petitioner was driving at the time of his arrest was lawful under the Fourth Amendment.

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases:

Constitution and statutes:

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OPINION BELOW

The judgment order of the court of appeals (Pet. App. 17) is unreported, but the judgment is noted at 903 F.2d 828 (Table).

JURISDICTION

The judgment of the court of appeals was entered on April 26, 1990. A petition for rehearing was denied on June 7, 1990. The petition for a writ of certiorari was filed on September 5, 1990. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

Following a jury trial in the United States District Court for the Middle District of Florida, peti-

tioner was convicted of conspiring to distribute cocaine, in violation of 21 U.S.C. 846, and possessing cocaine with intent to distribute it, in violation of 21 U.S.C. 841(a)(1). He was sentenced to concurrent terms of 121 months' imprisonment on each count, to be followed by a five-year term of supervised release. The court of appeals affirmed. Pet. App. 17.

1. The evidence at trial established that in the summer of 1988, undercover FBI agents in Florida began negotiating for the purchase of cocaine from a person known to them as "Alfredo," who was later identified as Alfredo Bermudez. Bermudez said he would be able to obtain multiple kilograms of cocaine from his source. In recorded telephone negotiations, the agents agreed to meet Bermudez in Daytona Beach, Florida, on September 15, 1988, to complete the sale of cocaine. Gov't C.A. Br. 4.

On September 15, 1988, undercover agents Teresa McBride and Ronald Boskin met Bermudez and two other people in a Daytona Beach parking lot. All three had arrived together in a car driven by the second man, later identified as petitioner; the third person was Miriam Suarez, petitioner's girlfriend. Gov't C.A. Br. 4; Pet. 4; Pet. App. 4-5. The agents had some discussions with Bermudez, who repeatedly conferred with petitioner in Spanish. Gov't C.A. Br. 4. Before any exchange of drugs was completed, however, an arrest signal was given, and when the agents tried to make arrests the car sped away. FBI agents and other law enforcement officers pursued the car, and a high speed chase ensued along a heavily traveled highway. After about two miles, the car became disabled and came to a stop on the highway. The pursuing officers arrived, arrested the car's occupants, and had the disabled automobile towed to a

nearby facility of the Volusia County Sheriff's Department. Gov't C.A. Br. 4-5; Pet. App. 2-3.

An officer was then directed to perform a search of the car. It happened that a drug-detecting dog was present at the facility where the car had been towed. The dog was allowed to sniff the exterior of the car, and the dog alerted to the trunk of the car, indicating that drugs were present inside the trunk. The trunk was then searched, and five kilograms of cocaine were found in a bag there. Gov't C.A. Br. 5, 9; Pet. App. 3-4; Pet. 7-8. Bermudez, who had pleaded guilty to a charge of conspiracy to possess cocaine with intent to distribute it, testified at trial that petitioner was the source of the cocaine he was negotiating to sell. Gov't C.A. Br. 5-6.

2. Petitioner filed a motion to suppress the cocaine found in the trunk of the car. After a hearing, the magistrate recommended that the motion be denied. Pet. App. 1-16. The magistrate found that impounding the vehicle was reasonable in light of the circumstances, that the seizure of the car was not done as a pretext to conduct an unlawful search, and that the inventory search was properly conducted according to written Sheriff's Department policies.[1] The magistrate also found that the dog sniff of the vehicle did not establish that the inventory was done as a pretext for an investigative search. Pet. App. 8-15. The district court adopted the magistrate's report and rec-

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[1] The magistrate rejected the government's argument that petitioner lacked standing to object to the search of the car. The magistrate found that the car, which petitioner was driving, was owned by petitioner's "live-in girlfriend." In light of the "close relationship [petitioner] had with the owner of the vehicle," the magistrate held that petitioner had a legitimate expectation of privacy in the car. Pet. App. 6-7.

ommendation and denied the motion to suppress. Gov't C.A. Br. 2. The court of appeals affirmed in a per curiam judgment order. Pet. App. 17-18.

ARGUMENT

Petitioner contends (Pet. 11-20) that the decision below conflicts with this Court's holdings in *Florida* v. *Wells*, 110 S. Ct. 1632 (1990), and *Colorado* v. *Bertine*, 479 U.S. 367 (1987). *Bertine* held that inventory searches are lawful as long as they are conducted according to standardized criteria or established routine. *Wells* applied that principle, holding that where the Florida Highway Patrol had no policy at all concerning the opening of closed containers found during an inventory search, the search of such a container was not a "sufficiently regulated" inventory search to satisfy the Fourth Amendment. 110 S. Ct. at 1635. Petitioner claims that the police in this case violated their written policies concerning inventory searches and that, just as in *Wells*, they had no inventory policy at all concerning closed containers and therefore could not lawfully search the closed bag they found in the trunk.

The magistrate reviewed the written policies of the Volusia County Sheriff's Department concerning inventory searches and found that the police conduct in this case—removing the car from a busy highway where it had been disabled and conducting an inventory search of the car—was consistent with those policies. There is no need for further review of this fact-specific application of *Wells*. In any event, regardless of whether the magistrate was correct in holding that the inventory search was conducted in compliance with sufficiently standardized regulations, the search of the car was lawful because the police had probable cause to believe it contained cocaine.

When the agents converged on petitioner's automobile, they not only had probable cause to arrest the occupants, but they also had probable cause to believe the car contained a substantial quantity of cocaine. Petitioner and his companions had just eluded capture at the scene of a planned undercover drug transaction. The entire reason for the meeting was to complete the sale of five kilograms of cocaine that Bermudez had agreed to supply. Bermudez arrived at the scene of the planned drug transaction—the parking lot of a shopping mall—in a car with petitioner and another person and conferred repeatedly with petitioner as he and the agents made final arrangements for the exchange. Under these circumstances, the agents had ample probable cause to believe that the cocaine they had agreed to purchase was inside the car. Moreover, before the inventory search of the car was undertaken, the actions of the drug-sniffing dog provided a further clear indication that the car contained drugs.

It is well settled that a warrantless search of an automobile is permissible when law enforcement officers have probable cause to believe the car contains contraband or evidence of criminal activity. *United States* v. *Johns*, 469 U.S. 478, 484 (1985); *Arkansas* v. *Sanders*, 442 U.S. 753, 760 (1979); *Chambers* v. *Maroney*, 399 U.S. 42, 52 (1970); *Carroll* v. *United States*, 267 U.S. 132 (1925). The police could properly have searched the car immediately after the vehicle and its occupants were apprehended, and the propriety of the search was not affected by the removal of the car from the highway to the police facility before the search was conducted. *United States* v. *Johns*, 469 U.S. at 483-487; *Chambers* v. *Maroney*, *supra*. The opening of the bag inside the trunk was

also proper, because the search of a car based on probable cause may extend to the entire car and any container within it that might contain the suspected contraband. *United States* v. *Ross*, 456 U.S. 798, 817-825 (1982). Thus, quite apart from whether the search in this case satisfied all the criteria for a proper inventory search, further review is unnecessary because the search was lawful as a probable cause search of a car.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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